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1 to. I think it's unquestionably
2 clear that we have gone over and
3 beyond our requirements under
4 30(b)(6) in this whole process.

5 MR. BROWN: Okay. Can I ask
6 my next question?

7 MS. HARDING: Yes, you may.

8 BY MR. BROWN:

9 Q. Mr. Hughes, let's go to
10 other schedules for the moment. Let's
11 take a look at the second schedule.

12 MS. HARDING: Again,
13 Mr. Hughes wasn't even designated
14 with respect to this schedule or
15 this exhibit, but go ahead. I am
16 happy to let him answer the
17 question.

18 MR. BROWN: We was
19 designated as a person that would
20 be produced on insurance issues.
21 There are nine topics on that
22 chart that had his name next to
23 it. We don't need to quarrel
24 about it. If he doesn't know the

1 Q. All right. Let's go back to
2 Schedule 1 and specifically page 7 of
3 Schedule 1.

4 A. Okay.

5 Q. And you heard me when I
6 introduced myself that one of my clients
7 is GEICO. You will see in the middle of
8 the page that there are three policies
9 for GEICO listed on page 7.

10 Do you see those?

11 A. Yes.

12 Q. Okay. Did Grace to your
13 knowledge have any settlement with GEICO?

14 A. Not to my knowledge.

15 Q. Okay. Let's go a little bit
16 further on to page 16. Another one of
17 the companies that I indicated I
18 represent is Republic, and you will see
19 toward the top of that page there are two
20 policies listed for Republic.

21 To your knowledge, did Grace
22 have any settlements with Republic
23 Insurance Company?

24 A. Again, I am familiar with

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1 answer, fine.

2 BY MR. BROWN:

3 Q. Mr. Hughes, my question with
4 respect to Schedule 2 of Hughes-12 is, do
5 you understand what the schedule
6 reflects?

7 A. Yes.

8 Q. What is that?

9 A. It's a list of the insurance
10 settlement agreements -- settlement
11 agreements which resolved coverage
12 disputes with liability insurers that
13 provided Grace with insurance coverage
14 for asbestos-related personal injury and
15 property damage claims and the dates of
16 those agreements.

17 Q. If you could take a look at
18 Schedule 3, which is a couple pages
19 along, do you have an understanding of
20 what is reflected on Schedule 3?

21 A. It's a similar list of
22 insurers where we have what's
23 characterized here as a asbestos
24 reimbursement agreements.

1 and maintain a list in my office because
2 of my involvement in terms of what -- I
3 don't know and don't recall specifically
4 an agreement with Republic.

5 But the other issue, of
6 course, when you come with insurance
7 companies is kind of the changing
8 landscape of who they are. But I don't
9 specifically recall Republic Insurance.
10 I think there are over 60 or 70
11 agreements, settlement agreements with
12 different kinds.

13 Q. Would you agree with me that
14 Republic Insurance Company does not
15 appear on either Schedule 3 -- excuse me
16 -- either 2 or 3?

17 A. No.

18 Q. Does that help refresh your
19 recollection as to whether Grace had --

20 MR. LEWIS: That sounds like
21 a double negative. I don't know
22 that the record is clear on that.

23 MR. SCHIAVONI:

24 No, he doesn't agree or not?

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1 MR. LEWIS: Can you read it
2 back? I might have muddled it.
3 (The reporter read from the
4 record as requested.)

5 THE WITNESS: I agree that
6 it's correct.

7 BY MR. BROWN:

8 Q. We were talking about
9 Republic. Why don't we try to fix that.

10 I am correct, am I right
11 knot that Republic Insurance Company does
12 not appear on Schedule 2 or 3?

13 A. Yes, you are correct. It
14 does not appear on Schedule 2 or 3.

15 Q. Does that refresh your
16 recollection as to whether Grace had a
17 settlement agreement with Republic?

18 A. I have no recollection that
19 it does, and since it doesn't appear on 2
20 and 3 and my understanding is 2 and 3 are
21 accurate, then I would say my
22 understanding would be no, that there is
23 no settlement agreement with Republic.

24 Q. Okay. You indicated at the

1 question, go ahead.

2 THE WITNESS: Well, to
3 provide insurance coverage and to
4 provide indemnity payments when
5 the underlying policies under the
6 terms of the insurance contract.
7 If a loss covered within the scope
8 of the coverage provided to the
9 insured and that the underlying
10 policies have been exhausted, that
11 it would trigger an obligation on
12 the part of the excess insurer to
13 pay the claim, again, in a manner
14 consistent with the insurance
15 policy.

16 BY MR. BROWN:

17 Q. Okay. And just following up
18 on that latter phrase at the end of your
19 answer, do you understand generally --
20 and I understand that it may be different
21 from policy to policy. But do you
22 understand generally that the insurer has
23 a duty to cooperate with the excess
24 insurer?

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1 outset that you were generally familiar
2 with Grace's insurance program.

3 Are you generally familiar
4 with the rights and duties of the
5 insured, on the one hand, and the
6 insurer, on the other, under an excess
7 policy?

8 MS. HARDING: Object to
9 form.

10 Go ahead.

11 THE WITNESS: Yes, I am
12 generally familiar.

13 BY MR. BROWN:

14 Q. Okay. Can you describe your
15 familiarity in terms of -- what do you
16 understand to be the insurer's, the
17 excess insurer's rights under an excess
18 policy?

19 MS. HARDING: I am just
20 going to object to form and to the
21 extent it's overly broad and
22 doesn't refer to a specific
23 policy.

24 But if you can answer the

1 MS. HARDING: Object to
2 form. Again, same objection.

3 THE WITNESS: I know
4 generally that in terms of
5 insurance policies, an insured has
6 a duty to cooperate.

7 BY MR. BROWN:

8 Q. And the insured has a duty
9 to give notice of claims; you are
10 familiar with that as well?

11 A. Yes.

12 Q. And are you generally
13 familiar at that the excess layer, the
14 insure has a right to associate in the
15 defense of claims?

16 MS. HARDING: Object to
17 form.

18 THE WITNESS: To associate
19 in defense of claims?

20 BY MR. BROWN:

21 Q. Yes.

22 A. Yes, although I think that,
23 again, that's something that you alluded
24 to earlier that I would think varied from

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1 policy to policy in specific relation.

2 Q. Okay. To your knowledge,
3 does Grace have any agreement with GEICO
4 pursuant to which GEICO gave up any of
5 its rights or ceded any of its rights
6 under the policies that appear page 7 of
7 Schedule 1 of Hughes-12?

8 MS. HARDING: Object to
9 form.

10 THE WITNESS: Not to my
11 knowledge.

12 BY MR. BROWN:

13 Q. And would your answer be the
14 same with respect to Republic?

15 A. Yes.

16 Q. To your knowledge, has GEICO
17 or Republic given up any of its claims
18 handling rights pursuant to any agreement
19 with Grace?

20 MS. HARDING: Just objection
21 to form. That assumes facts not
22 in evidence.

23 But go ahead.

24 THE WITNESS: Not to my

1 for an exhaustive list.

2 MS. HARDING: Right.

3 THE WITNESS: As I said
4 earlier, I was responsible for the
5 day-to-day management and
6 resolution of the claims
7 internally. And as such, I worked
8 with the outside law firms in
9 litigating the cases and settling
10 cases, and internally I worked
11 with different groups within the
12 company to appropriately record
13 and manage the provision of
14 services from outside counsel
15 firms, payment of the firms,
16 payment of the settlements.

17 BY MR. BROWN:

18 Q. Okay. What was the period
19 of time over which you had that role?

20 A. I would say from 1989
21 through 19 -- excuse me -- through 2001,
22 April of 2001.

23 Q. Okay. And that was the
24 petition date?

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1 knowledge.

2 BY MR. BROWN:

3 Q. Okay. You indicated earlier
4 that your title is senior litigation
5 counsel; is that correct?

6 A. Yes.

7 Q. And I guess at the time of
8 the petition you reported to Mr. Siegel;
9 is that correct?

10 A. Yes.

11 Q. And he was the general
12 counsel at the time?

13 A. Yes.

14 Q. How would you describe your
15 responsibilities with respect to asbestos
16 personal injury claims pre-petition?

17 MS. HARDING: I am just
18 going to object to the form to the
19 extent it's overly broad, requires
20 an overly broad interpretation.

21 But to the extent you can
22 answer it --

23 MR. LEWIS: I am not.

24 MR. BROWN: I am not asking

1 A. Yes.

2 Q. Is it fair to say that you
3 are the person at Grace most
4 knowledgeable with respect to the manner
5 in which asbestos personal injury claims
6 were handled pre-petition?

7 A. Yes.

8 Q. Did Grace have national
9 coordinating counsel with respect to
10 asbestos bodily injury claims?

11 A. It depends on how you define
12 national coordinating counsel. We had a
13 national -- Casner & Edwards in Boston
14 handled all our documents, and Bob
15 Murphy, a partner there, would
16 participate in trials and work with
17 outside counsel. And there were some
18 other lawyers around the country who I
19 would call upon to do that as well.

20 Q. Okay. I gather from your
21 answer that he didn't have the official
22 title national coordinating counsel?

23 A. Well, also, I think after
24 1989, the outside counsel didn't report

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1 to him. I view national coordinating
2 counsel kind of strictly as I understand
3 it is when the outside counsel in a
4 particular jurisdiction report on a
5 day-to-day basis to the firm, and then
6 the national counsel, in turn, reports to
7 the client and the corporation.

8 And we had it set up a
9 little differently, that after 1989 --
10 again, before that, I viewed Bob Murphy
11 as serving what I would call traditional
12 national coordinating counsel and that
13 the outside firms reported to him. But
14 we kind of reversed that.

15 Q. Okay. If I understood your
16 answer then, is it fair to say from 1989
17 to 2001, that effectively you acted as
18 the national coordinating counsel?

19 A. Yeah, with the assistance of
20 Casner & Edwards and Bob Murphy and
21 others.

22 Q. Mr. Finke, I believe,
23 testified that in addition to Casner &
24 Edwards Grace had approximately 25 other

1 But, again, there were
2 communications on the status of cases on
3 what was going on, on working with Grace
4 witnesses, expert, fact, was done through
5 me. And I made the arrangements. The
6 only exception to that was, again, with
7 Casner & Edwards that the process worked
8 that discovery responses, Grace's
9 discovery responses in the underlying
10 cases, those would be -- I would be
11 copied on them. But they would be
12 directly sent to Casner & Edwards and Bob
13 Murphy or the associates at that firm
14 that were actually prepared and would
15 work directly with the local counsel in
16 preparing responses.

17 Q. Okay. Is it fair to say
18 that you and the local firms, the 50 or
19 so firms that you testified that defended
20 Grace, and the Casner & Edwards firm
21 acted as a group in the defense of
22 asbestos claims asserted against Grace?

23 A. Yes.

24 MS. HARDING: Object to

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1 firms around the country that were
2 defending Grace in various jurisdictions
3 against asbestos PI claims.

4 Does that sound about right
5 to you?

6 A. It sounds a little low,
7 actually, since there are 50 different
8 states and then I think we had cases in
9 virtually every state and in some
10 jurisdictions, California, Texas, would
11 have more than one counsel.

12 Q. So what would be your
13 estimate or number?

14 A. My estimate would be 50.

15 Q. Now, what was your
16 interaction with each of those 50 or so
17 law firms in terms of defending against
18 asbestos claims?

19 A. They would report on a
20 regular basis in terms of developments,
21 they would -- again, obviously when you
22 talk about 50 firms, a lot of the level
23 of activity of some of the firms was lot
24 less than others.

1 form.

2 Go ahead.

3 BY MR. BROWN:

4 Q. Can you describe for me the
5 types of things that that group did in
6 defending Grace against asbestos claims?

7 A. Virtually everything an
8 attorney would do representing the
9 company in asbestos or any kind of toxic
10 tort case. You know, they responded to
11 complaints, they responded to discovery,
12 they appeared on Grace's behalf at
13 depositions, they tried cases, they
14 negotiated settlements, they participated
15 in defense groups.

16 Q. Let me just give you an
17 example. A complaint comes in the door.
18 Was it the responsibility of whatever
19 counsel was handling that particular case
20 to look at the complaint, to see if the
21 complaint had procedural defects or the
22 statute of limitations had expired, to do
23 those sort of things?

24 A. Yeah. The complaints came

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1 and generally were served through us. I
2 know some people had systems where local
3 counsel accepted service. We did not do
4 that.

5 We had a system where when
6 the complaint was entered into the case
7 management system, it automatically sent
8 the complaint to the firm that had been
9 designated as local counsel in that
10 jurisdiction, and that local counsel,
11 once they received the complaint, review
12 the complaint and file an appropriate
13 response and then handle the case.

14 Q. And an appropriate response
15 might be a motion to dismiss? It could
16 be an Answer?

17 A. It could be an Answer; it
18 could be a motion to dismiss. You have
19 to keep in mind we don't have to get --
20 we have to keep in mind the asbestos
21 personal injuries cases in a lot of
22 jurisdictions, a lot of this was kind of
23 institutionalized through case management
24 orders that in some cases, all you had to

1 would come in in a box load and you would
2 look through them and see if they made
3 the statute of limitations, whether they
4 had other procedural defects that might
5 have been peculiar to the given
6 jurisdiction, and, if appropriate, file
7 motions, file preliminary objections.
8 It's called different things in different
9 jurisdictions.

10 Were your local counsel
11 doing that sort of thing pre-petition?

12 A. Yes.

13 MS. HARDING: Object to
14 form. Are you asking him
15 generally did that happen or did
16 it happen with all cases?

17 MR. BROWN: I am trying to
18 get a sense of how the cases were
19 handled pre-petition, whether
20 motions were filed if it was
21 appropriate.

22 MS. HARDING: Right. But
23 they have hundreds of thousands of
24 cases. Are you just saying did

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1 do was enter an appearance. There
2 wasn't -- some of the analysis because of
3 the repetitious nature of it, that
4 typically if I was involved in a lawsuit
5 today as an in-house lawyer and sent it
6 to somebody, we might sit down and talk
7 about what the Answer is and what the
8 allegations are.

9 In an asbestos case, again,
10 because there were thousands of them --
11 in some cases there were actually what I
12 would call form Answers and form
13 Complaints and so on. So it was highly
14 managed by a case management order and
15 the court.

16 Q. Let me give you an example
17 from my own experience and ask you
18 whether Grace did these sort of things.

19 I used to do some of the
20 that work when I was a junior associate,
21 and one of the things I was charged with
22 was reviewing complaints and finding out
23 if there were procedural defects with
24 complaints. And sometimes the complaints

1 that ever happen or are you asking
2 if that happened in every case?

3 MR. BROWN: No.

4 MS. HARDING: I am asking
5 you because it's not clear.

6 MR. BROWN: I am asking him
7 whether in the course of
8 evaluating a case that came in the
9 door, whether it was the
10 responsibility of counsel to look
11 at it for procedural defects and,
12 if appropriate, file a motion and
13 if appropriate, file an answer.

14 THE WITNESS: Yes.

15 BY MR. BROWN:

16 Q. You also mentioned
17 discovery, and I think you said the
18 Casner & Edwards firm, if I understood
19 you correctly, handled Grace's responses
20 to discovery; is that correct?

21 A. Asbestos personal injury
22 cases, yes.

23 Q. Okay. How was the discovery
24 that Grace took of claimants handled by

<p>Page 330</p> <p>1 you, by Casner & Edwards, and the other 2 local firms that were defending cases? 3 MS. HARDING: And I am just 4 going to -- I think you have 5 already taken this into 6 consideration. I will object. To 7 the extent it calls for 8 attorney-client privilege or work 9 product, do not answer. But I 10 don't think you are asking him for 11 that. So I just want to make it 12 clear. 13 THE WITNESS: With a couple 14 of exceptions, which were 15 important but were relatively 16 infrequent, it would be handled by 17 the local counsel. The exceptions 18 are that if we received the 19 deposition notice of a Grace or 20 fact witness of a Grace former 21 employee or an expert, kind of a 22 national asbestos personal injury 23 expert, and we had specific 24 expertise and the fact witness</p> <p>PP Obj: R</p> <p>CPO</p>	<p>Page 332</p> <p>1 the answer to the question is yes, 2 although in many jurisdictions and 3 certainly in the major jurisdictions, 4 there tended to be a joint medical 5 defense group. And one firm or one 6 particular -- lawyers would often handle 7 some of the medical records issues and 8 the medical testimony issues in the case 9 on behalf of all of the defendants. 10 Q. Okay. And did your local 11 counsel look for other causes to a 12 particular claimant's injury? For 13 example, if they were a long-term smoker, 14 would that be an issue that Grace pursued 15 in discovery? 16 A. Sure. 17 Q. What other sort of defenses 18 in that regard would Grace inquire into? 19 A. Smoking, alternative 20 exposures, history, you know, whether the 21 person -- where the person worked and 22 exposure to other people's products, 23 questionable diagnoses in a meso case. 24 We would have it sent out to somebody</p>
<p>Page 331</p> <p>1 case would generally be Bob 2 Murphy. 3 But we might have somebody 4 from an outside firm that wasn't 5 specifically assigned a 6 jurisdiction to handle that. But 7 in terms of coworker depositions, 8 plaintiff depositions, developing 9 discovery with respect to a 10 particular job site, that would be 11 handled by the local counsel. 12 BY MR. BROWN: 13 Q. Okay. Do I gather from your 14 answer that local counsel, for example, 15 in written discovery depositions would 16 inquire into exposure to Grace products? 17 A. Yes. 18 Q. Okay. And product ID 19 sometimes called? 20 A. Yes. 21 Q. And how about medical 22 issues? 23 A. Well, as you may know, if 24 you had some prior involvement with it,</p> <p>PP Obj: R</p> <p>CPO</p>	<p>Page 333</p> <p>1 else to review the pathology. All the 2 kinds of things that a defense lawyer in 3 an asbestos case and just more broadly in 4 a personal injury case would do. 5 They were given relatively 6 broad, they being the local counsel, 7 authority to act on Grace's behalf in 8 defending the cases. 9 Q. Were they told to zealously 10 defend Grace? 11 MS. HARDING: Well, object 12 to the extent it calls for 13 attorney-client communications. 14 THE WITNESS: I certainly 15 hope I wouldn't have to tell 16 people to do that since they are 17 members of the bar and they have 18 that ethical obligation. 19 But, yeah, they were 20 certainly told -- there was a 21 management process, and there were 22 guidelines provided to them to 23 some degree of what they wanted to 24 do and what they shouldn't do.</p> <p>PP Obj: R</p> <p>CPO</p>

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1 And there were things that I did
2 in terms of resolving cases that
3 would have taken them out.

4 But, yeah, I think they
5 understood that they were to
6 zealously defend it, and we had
7 some very good lawyers
8 representing us.

9 BY MR. BROWN:

10 Q. And was it your
11 responsibility internally to make certain
12 that that happened?

13 A. Yes.

14 Q. Now, did you work with any
15 asbestos plaintiffs lawyers? When I say
16 work with them, did you have interaction
17 with any of the big guns in the asbestos
18 bar?

19 A. Personally?

20 Q. Yes.

21 A. Yes.

22 Q. Who?

23 A. And I was alluding to this
24 earlier. Most of them, certainly in

1 A. And I dealt with most of
2 them, at least at that time. It's been
3 eight years. I am sure it's a new group.
4 But at that point, many of them.

5 Q. I am not so sure.

6 Give me some examples.

7 A. You can go down
8 geographically. I know Perry Weitz, and
9 I have met with Perry Weitz. I know Joe
10 Rice. I know Greitzer & Locks. I have
11 dealt with Dino Vovet (phonetic), Peter
12 Angelos' firm many times. I used to know
13 Mike Kelly who has passed away. I know
14 Jim Ferraro. I know Irving Gonzalez, who
15 is in jail. I know -- who else? I have
16 dealt with -- I know Russell Budd and
17 Fred Baron. I have dealt with Peter
18 Krauss.

19 Q. You mentioned Mr. Cooney
20 earlier, I think.

21 A. Cooney, I know John Cooney.
22 I have met with him.

23 Q. Any others that you can
24 think of?

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1 terms of the inventory settlement
2 agreements and when we got into the
3 process of settling larger groups, local
4 defense counsel on the asbestos personal
5 injury cases, when it's comes to
6 resolving larger groups, have kind of
7 conflicting motivations.

8 On one hand, they want to do
9 their client a good service, and they
10 want to get rid of cases as cheaply as
11 possible, but on the other hand,
12 inventory settlements where we might buy
13 up or settle the docket for six months,
14 eight months, even two, three months,
15 settlements like that cause the defense
16 lawyers to lose billable hours in terms
17 of their own businesses, lawyers.

18 So when we started getting
19 into those negotiations in the larger
20 groups, I would handle them personally.
21 And it was generally in that capacity
22 that I dealt directly with plaintiffs'
23 lawyers.

24 Q. Okay.

1 A. There is probably others I
2 have met with, and I have missed some.
3 But there are some that I haven't met,
4 either because we didn't get into those
5 kinds of discussions or I was comfortable
6 with the ability of our local counsel to
7 negotiate cases and just the need for me
8 to meet with them didn't arise.
9 Particularly in California, the
10 traditional California firms, I don't
11 recall meeting working with Steve Casner,
12 and there are others out there.

13 Q. All right. Again, we are
14 still focused on the pre-petition time
15 frame.

16 Was Grace required to obtain
17 the consents of any of the members of the
18 plaintiffs bar with respect to the manner
19 in which Grace defended itself against
20 asbestos claims, any of the gentlemen you
21 just mentioned?

22 MS. HARDING: Object to
23 form.

24 THE WITNESS: You will have

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1 to repeat that.

2 MR. LEWIS: We will have it
3 read back.

4 (The reporter read from the
5 record as requested.)

6 MS. HARDING: I am sorry.

7 MR. LEWIS: I am sorry. I
8 don't understand the question.

9 MR. BROWN: You are not
10 answering it.

11 MR. LEWIS: I just object to
12 the question as unintelligible as
13 stated.

14 MR. BROWN: Do you
15 understand the question?

16 THE WITNESS: I think so.
17 I think the answer is no,
18 although they would occasionally
19 volunteer information to tell
20 Grace how to defend cases.

21 BY MR. BROWN:

22 Q. And you didn't seek their
23 consent?

24 A. No.

1 Q. How about the exposure
2 criteria? Did that dictate that to
3 Grace?

4 A. No, they didn't.

5 Q. Did they dictate to Grace
6 the types of proofs that Grace would
7 accept for a settlement?

8 A. Again, it was a negotiation.
9 But, no, they didn't dictate it.

10 Q. Did they decide what type of
11 release Grace would accept in exchange
12 for a settlement?

13 A. No. It's a negotiation.

14 Q. All right. Again,
15 pre-petition, your title was senior
16 litigation counsel?

17 A. Yes.

18 Q. Okay. Did the plaintiff's
19 attorney have the power to remove you if
20 they didn't like the way you were
21 handling the defense of Grace claims?

22 MS. HARDING: Objection.

23 It's relevance at this point.

24 Go ahead.

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1 Q. Did the plaintiffs bar
2 participate in the internal
3 decision-making regarding the manner in
4 which Grace defended asbestos claims
5 pre-petition?

6 A. No.

7 Q. Did Grace leave it up to the
8 plaintiffs' attorneys to decide how much
9 Grace would pay for a claim?

10 A. No.

11 Q. Did Grace consult with the
12 plaintiffs bar with respect to the manner
13 in which Grace and its outside counsel
14 defended claims?

15 A. No.

16 Q. Did the plaintiffs'
17 attorneys decide what medical criteria
18 were satisfactory for a settlement with
19 Grace?

20 A. It was a product of
21 negotiation if there were inventory
22 settlements that had specific objective
23 medical criteria. They didn't dictate to
24 Grace what the medical criteria was.

1 THE WITNESS: No, they
2 didn't.

3 BY MR. BROWN:

4 Q. Did they control how much
5 you were paid for your job at Grace?

6 A. No.

7 MR. BROWN: I might be
8 finished. Let me have a couple of
9 minutes.

10 (There was a break from 4:11
11 p.m. to 4:16 p.m.)

12 BY MR. BROWN:

13 Q. Mr. Hughes, can I ask you to
14 take a look at what was previously marked
15 Hughes-3?

16 A. (Witness complies with
17 request.)

18 MS. HARDING: Exhibit 4 to
19 the Exhibit Book.

20 MR. LEWIS: Exhibit 4 to the
21 Exhibit Book, which is Exhibit-3
22 to the deposition.

23 BY MR. BROWN:

24 Q. Mr. Hughes, Exhibit-3, there

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PP
Obj:
R;
408

1 was a question earlier today. It's the
2 Trust Distribution Procedures, correct?

3 A. Yes.

4 Q. And I think you indicated
5 that you did not draft this document; do
6 I have that correct?

7 A. Yes.

8 Q. I believe you said the ACC,
9 asbestos claimants committee, drafted the
10 document; is that correct?

11 MR. LIESEMER: Object to the
12 form of the question.

13 THE WITNESS: That was my
14 understanding, yes.

15 BY MR. BROWN:

16 Q. Okay. And you indicated
17 that you had reviewed the document?

18 A. Yes, I have.

19 Q. And if I remember your
20 testimony correctly, you indicated that
21 you were given an opportunity to comment
22 on the document?

23 A. Yes.

24 Q. I believe you also stated

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1 that you didn't recall any comment that
2 you had on the document; is that correct?

3 A. I didn't recall any specific
4 comment. I recall that there were some
5 comments I had made.

6 Q. Okay. Do you recall what
7 those comments were?

8 A. Not as I sit here today, no.

9 Q. Okay. I think you were also
10 asked who else at Grace reviewed the
11 document, and I believe your answer was
12 your outside counsel did, reviewed it; do
13 I have that right?

14 A. Yes.

15 Q. Other than you and your
16 outside counsel, are you aware of anyone
17 else that reviewed and drafted the TDP on
18 the Grace side?

19 A. I don't know if Richard
20 Finke or Mark Shelnitz, our general
21 counsel, had taken a look at it at that
22 time. Perhaps Richard was asked about
23 that question when he was deposed. But
24 they would be the other logical

1 candidates who may have taken a look at
2 it.

3 Q. Okay. And the Trust
4 Distribution Procedures are the
5 procedures pursuant to which asbestos
6 personal injury claims are to be handled
7 if the Plan is confirmed, correct?

8 A. Right, by the Trust.

9 MR. BROWN: Okay. All
10 right. I am going to pass you to
11 Mr. Cohn. Thank you.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. JACOB COHN:

16 Q. Good afternoon, Mr. Hughes.
17 Jacob Cohn for Federal Insurance Company.
18 How are you?

19 MS. HARDING: Did you all
20 join in somebody's 30(b)(6)?

21 MR. JACOB COHN: No. I am
22 participating as a party in
23 interest here.

24 MS. HARDING: So just to be

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1 clear, you didn't notice the dep
2 and you didn't join anybody else's
3 notice?

4 MR. JACOB COHN: No. I am
5 just a party to the case, and I
6 came to the deposition. And I am
7 entitled to cross-examine, so I
8 am.

9 BY MR. JACOB COHN:

10 Q. Now, Mr. Hughes --

11 MS. HARDING: There are a
12 lot of people who want to ask
13 questions today. Do you have a
14 sense of how long it will take?

15 MR. JACOB COHN: I would
16 think no more than 15 to 20
17 minutes, hopefully less.

18 MS. HARDING: All right. I
19 think in the interest of not
20 having to come back, I will go
21 forward, but I --

22 MR. JACOB COHN: You are
23 burning --

24 MS. HARDING: I will State

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1 an objection on the record that
2 you didn't notice the deposition.

3 MR. JACOB COHN: I don't
4 understand that to be a bona fide
5 deposition objection.

6 MS. DeCRISTOFARO: At one
7 point, there was an email that
8 said in the interest of not having
9 a notice, that not everyone needed
10 to serve separate notices.

11 MR. JACOB COHN: Everything
12 is on the record.

13 BY MR. JACOB COHN:

14 Q. From 1989 to 2001, you were
15 principally in charge of handling
16 asbestos claims against Grace, correct?

17 A. Asbestos personal injury
18 claims, yes.

19 Q. And from 1989 to 2001 Grace
20 was a for-profit business corporation,
21 correct?

22 A. Yes.

23 Q. So your goal was to minimize
24 the amount of money that Grace had to pay

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1 in the defense and settlement and
2 resolution of asbestos PI claims,
3 correct?

4 A. Yes.

5 Q. Now, just looking for a
6 moment at what was marked Hughes-12,
7 which is Exhibit 6 to the Exhibit Book
8 from the Plan, if you would just take a
9 quick look at the Schedule 2.

10 Now, Schedule 2, am I
11 correct, these are insurance companies
12 that had settlement agreements where they
13 paid a lump sum of money to Grace and
14 received a release for policy obligation;
15 would that be correct?

16 A. That's my understanding.

17 Q. Okay. And, for example,
18 Federal Insurance Company, my client, has
19 a settlement for one of its policies, and
20 I will represent to you that they paid
21 \$300,000 in 1997 to settle a \$500,000
22 sub-limit.

23 Now, that \$300,000 was put
24 into Grace's treasury; is that right?

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1 MS. HARDING: Object to form
2 and foundation.

3 MR. JACOB COHN: Whatever.
4 You can answer.

5 THE WITNESS: I assume so,
6 yes.

7 BY MR. JACOB COHN:

8 Q. So that became part of the
9 money that would be available to you,
10 whatever settlement would come in to pay
11 for the resolution of asbestos PI claims,
12 correct?

13 MS. HARDING: Object to
14 form.

15 THE WITNESS: Well, again, I
16 don't -- yeah. I mean, perhaps
17 indirectly. But there was
18 \$300,000 that was settled and
19 \$300,000 was entered -- became
20 Grace's property, and Grace
21 settled cases as part of its
22 business operations.

23 BY MR. JACOB COHN:

24 Q. And Grace would typically

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1 have to promise the insurer to use those
2 funds to pay for the resolution of
3 asbestos claims; is that accurate?

4 MS. HARDING: Object to
5 form, in terms of typically.

6 THE WITNESS: Yeah, I guess
7 it's an accounting matter they
8 would apply it to asbestos
9 liabilities.

10 BY MR. JACOB COHN:

11 Q. All right. Now, Schedule 3
12 is listed as schedule Asbestos Insurance
13 Reimbursement Agreements, right?

14 A. Right.

15 Q. Now, those are what would be
16 typically called a coverage in place
17 agreement; would you agree with that
18 terminology?

19 A. Yes.

20 Q. Okay. So as I understand
21 from Grace's Securities and Exchange
22 Commission filings, most of these
23 agreements require the insurer to pay a
24 portion of every claim that Grace settles

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<p>1 that triggers their policy; would that be 2 right?</p> <p>3 MS. HARDING: Object to form 4 and object to asking him questions 5 about generally insurance 6 settlement agreements. 7 MR. JACOB COHN: Okay. 8 MS. HARDING: Every 9 agreement is different. 10 MR. JACOB COHN: That's 11 fine.</p>	<p>1 cents on the dollar. 2 BY MR. JACOB COHN: 3 Q. Would come back in? 4 A. Again, it would vary 5 depending on where we were in terms of 6 the coverage, yes, we would be 7 reimbursed. And it varied when, you 8 know, during the time period. There is a 9 lot of factors that go into that. And I 10 don't think you can answer it 11 definitively, but it certainly would be 12 in the range I mentioned for some period 13 of the time.</p>
<p>12 BY MR. JACOB COHN: 13 Q. Can I rely upon Grace's SEC 14 filings? 15 A. Yes. 16 Q. Okay. So can you describe 17 to me the policies that are identified in 18 those filings as policies that pay on a 19 pro rata basis, how the money would be 20 spent and recouped from those insurers?</p> <p>21 MS. HARDING: Object to 22 form. 23 THE WITNESS: We certainly 24 had arrangements with insurance</p>	<p>14 Q. And Grace believed it could 15 do a better job of handling the claims by 16 itself without having the insurers be 17 involved; is that accurate? 18 MS. HARDING: Object to 19 form. 20 THE WITNESS: Whether or not 21 we thought we could do a better 22 job or the insurance carriers 23 would prefer that we did it, the 24 evolution of it was that Grace</p>
Page 351	Page 353
<p>1 companies that provided that they 2 would pay us a percentage or a pro 3 rata portion of the money we spent 4 that triggered their policy that 5 we spent on asbestos claims. 6 BY MR. JACOB COHN: 7 Q. And Grace itself paid a 8 portion of every dollar that was spent to 9 resolve an asbestos claim, correct? 10 A. I think we generally paid it 11 in the first instance and was reimbursed 12 under these kinds of agreements, but yes. 13 Q. And typically how much of 14 every dollar that you paid out would you 15 be reimbursed from one of these 16 agreements? 17 MS. HARDING: Object to 18 form, foundation. 19 Go ahead. 20 THE WITNESS: Again, it 21 would vary, but based on valuation 22 we do on the 1.7 billion and the 23 500 million I referred to earlier, 24 I think 25 cents on the dollar, 30</p>	<p>1 handled it itself? 2 BY MR. JACOB COHN: 3 Q. Okay. And at all times, 4 while you were there, Grace endeavored to 5 minimize the amount of money it had paid 6 to resolve asbestos claims; is that fair 7 to say? 8 A. Yes. 9 Q. Now, in 2005, there was a 10 conference call between Grace and its 11 insurers. Were you a participant in that 12 call? 13 A. I don't specifically recall, 14 but I may have been. 15 Q. Do you remember any 16 discussion between Grace and its insurers 17 to the effect that Grace was not ready to 18 deal with its high level excess insurers? 19 A. In what sense not ready? 20 Q. In the sense of, in the 21 course of the bankruptcy proceedings, 22 W.R. Grace communicating that sentiment 23 to its non-settled high level insurers? 24 A. I don't recall that</p>

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<p>1 conversation.</p> <p>2 Q. You said you were given a</p> <p>3 chance to review the TDPs in 2008 -- I am</p> <p>4 sorry. Was it 2008?</p> <p>5 A. Yeah, it would have been</p> <p>6 2008.</p> <p>7 Q. Okay. Now, at that point in</p> <p>8 time, Grace's obligations pursuant to the</p> <p>9 settlement it reached in April 2008 were</p> <p>10 established, correct?</p> <p>11 MS. HARDING: Object to</p> <p>12 form.</p> <p>13 THE WITNESS: Yes. There</p> <p>14 had been a Term Sheet and an</p> <p>15 agreement reached.</p> <p>16 BY MR. JACOB COHN:</p> <p>17 Q. There was a defined amount</p> <p>18 of money and other things that Grace was</p> <p>19 going to give to the Trust to settle its</p> <p>20 asbestos liabilities; is that right?</p> <p>21 A. Yes.</p> <p>22 MS. HARDING: Well, just</p> <p>23 object to form.</p> <p>24 THE WITNESS: Asbestos</p>	<p>1 constituencies was the most important</p> <p>2 consideration to Grace in reviewing the</p> <p>3 TDPs?</p> <p>4 MR. LIESEMER: Object to the</p> <p>5 form.</p> <p>6 MS. HARDING: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: I think that</p> <p>9 the most important consideration</p> <p>10 to Grace in the TDP was that they</p> <p>11 were, from a legal standpoint,</p> <p>12 sufficiently consistent with, to</p> <p>13 the extent they had to be,</p> <p>14 consistent with the prior practice</p> <p>15 and that they were a reasonable</p> <p>16 means of processing and paying</p> <p>17 claims so that the Plan would be</p> <p>18 confirmed.</p> <p>19 BY MR. JACOB COHN:</p> <p>20 Q. So it was important at this</p> <p>21 point -- strike that.</p> <p>22 At this point, Grace had no</p> <p>23 additional financial interest in how</p> <p>24 asbestos claims were handled; is that</p>
<p>Page 355</p> <p>1 personal injury liabilities.</p> <p>2 BY MR. JACOB COHN:</p> <p>3 Q. And is it fair to say that</p> <p>4 thereafter, the most significant interest</p> <p>5 that Grace had in the TDPs was insuring</p> <p>6 that it obtained the 75 percent or</p> <p>7 greater vote from the asbestos PI</p> <p>8 claimants?</p> <p>9 MS. HARDING: Object to</p> <p>10 form.</p> <p>11 THE WITNESS: It was</p> <p>12 important to Grace that we emerge</p> <p>13 from bankruptcy and that the Trust</p> <p>14 and so on and the Plan proceed so</p> <p>15 that the reorganized company could</p> <p>16 emerge from bankruptcy and be free</p> <p>17 from its asbestos liabilities.</p> <p>18 That was the purpose of the</p> <p>19 Chapter 11, and that was obviously</p> <p>20 Grace's interest.</p> <p>21 BY MR. JACOB COHN:</p> <p>22 Q. So is the answer to my prior</p> <p>23 question yes, getting 75 percent super</p> <p>24 majority approval by the asbestos</p>	<p>Page 357</p> <p>1 correct?</p> <p>2 MS. HARDING: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: Well, that's</p> <p>5 not necessarily correct. But we</p> <p>6 certainly had -- since our</p> <p>7 obligation to fund the Trust,</p> <p>8 personal injury Trust, was fixed,</p> <p>9 both in terms of the payments that</p> <p>10 were to be made at the time of</p> <p>11 emergence and the payments off in</p> <p>12 the future, then I guess to that</p> <p>13 extent, yeah, we had already</p> <p>14 established what our liability</p> <p>15 was. And our concern was that the</p> <p>16 Trust Distribution Procedures were</p> <p>17 met whatever legal criteria that</p> <p>18 were necessary and that the Plan</p> <p>19 be confirmed.</p> <p>20 BY MR. JACOB COHN:</p> <p>21 Q. So as of the time that the</p> <p>22 settlement was reached, your concern with</p> <p>23 the TDPs was that they enable a Plan to</p> <p>24 be confirmed in a way that would enable</p>

OBS Obj:
R;H;LO

90 (Pages 354 to 357)

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1 Grace to have finality with respect to
2 its asbestos obligations and emerge as a
3 for-profit corporation again?

4 MS. HARDING: Object to
5 form. I think it mischaracterizes
6 and doesn't completely accurately
7 summarize what he just said
8 regarding legal criteria.

9 BY MR. JACOB COHN:

10 Q. Would you agree with what I
11 just said?

12 A. No. We operated in
13 bankruptcy as a for-profit company. I
14 think our goal would be to operate as a
15 corporation unencumbered by asbestos
16 liabilities.

17 MR. JACOB COHN: No further
18 questions. Thanks.

19 - - -

20 EXAMINATION

21 - - -

22 BY MS. SIMON:

23 Q. Good afternoon. My name is

24 Marnie Simon. I represent Fireman's Fund

1 Allianz on page 1 of Schedule 1, the
2 Fireman's Fund policies on page 7 of
3 Schedule 1, and then the Reunion -
4 Adriatica policy on page 16.

5 MS. MAHALEY: I object to
6 the form of the question.

7 BY MS. SIMON:

8 Q. Are you aware of any
9 agreements with those insurance companies
10 to waive their rights under their excess
11 policies that was in place with Grace
12 pre-petition?

13 A. No, I am not.

14 MS. HARDING: Object to
15 form.

16 MS. SIMON: That's all.

17 - - -

18 EXAMINATION

19 - - -

20 BY MS. McCABE:

21 Q. Good afternoon, Mr. Hughes.

22 My name is Eileen McCabe, and I here
23 today --

24 A. I remember you Eileen.

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1 Insurance Company and the Allianz related
2 entities.

3 A. Sure.

4 Q. I believe you testified when
5 speaking with Michael Brown that
6 reviewing the GEICO policies under, I
7 think it was, Exhibit-12 here and Exhibit
8 6 to the Plan Asbestos Insurance Transfer
9 Agreement, I believe you testified there
10 that to your knowledge, GEICO had not --
11 there were no agreements between Grace
12 and GEICO in terms of GEICO ceding or
13 waiving its rights under those excess
14 policies; is that correct?

15 A. Yes.

16 Q. And would you answer --

17 A. That I was aware of.

18 Q. That you were aware of.

19 And would your answer be the
20 same for the Fireman's Fund and Allianz
21 companies?

22 A. You are talking with respect
23 to the excess insurance policies?

24 Q. The excess policies of

1 Q. I am here today on behalf of
2 AXA Belgium as a successor to Royale
3 Belge.

4 And just to make this go
5 quickly, if I could follow up with the
6 same questions that were just asked to
7 you with regard to the Royale Belge
8 policies that appear on page 16 of what's
9 been designated Hughes Exhibit-12. There
10 are three policies that are identified
11 there for excess policies.

12 Are you aware of any
13 agreement that Royale Belge had
14 pre-petition pursuant to Royale Belge
15 ceded or waived any of its excess
16 policies as listed on that policy?

17 MS. HARDING: Object to
18 form.

19 THE WITNESS: No, I am not.

20 MS. McCABE: That's it.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. SCHIAVONI:

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1 Q. Mr. Hughes, hi. I am Tank
2 Schiavoni from O'Melveny for Arrowwood.
3 Mr. Hughes, you were asked
4 some questions about BNSF. Do you recall
5 that generally?

6 A. Yes.

7 Q. BNSF was asking about or
8 their counsel was asking about whether
9 claims against them were broadly covered
10 in the policy issues to Grace.

11 Do you remember that line of
12 questioning, just the line of questioning
13 generally?

14 A. Yes.

15 Q. In February of 2006, did
16 Royal give notice to you and to Grace
17 that BNSF was seeking coverage from Royal
18 under Grace's Zonolite policies for
19 claims against BNSF by Libby claimants?

20 A. I recall discussions at that
21 period of time between Grace and Royal
22 concerning BNSF claims, yes.

23 MR. SCHIAVONI: 13 is next.
24 (Hughes-13 marked for

1 late as March, right?

2 A. Uh-huh.

3 Q. And did you receive a copy
4 of Exhibit-13 in the ordinary course of
5 your business?

6 A. Yes.

7 Q. Okay. And having reviewed
8 Exhibit-13, does it refresh your memory
9 that Royal gave you notice in February of
10 2006 that BNSF was seeking coverage from
11 Royal under Grace's Zonolite policies for
12 claims asserted against BNSF by the Libby
13 claimants?

14 A. Yes.

15 Q. Did Royal provide Grace with
16 a copy of the January 31 letter from BNSF
17 to Royal demanding coverage under Grace's
18 Zonolite policies?

19 A. Yes.

20 Q. Am I correct that Royal
21 advised Grace in February of 2006 that
22 Royal had declined to accept the tender
23 of claims by BNSF under Grace's Zonolite
24 policies?

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1 identification at this time.)

2 BY MR. SCHIAVONI:

3 Q. Would you take a minute to
4 read Exhibit-13. And then my question,
5 Mr. Hughes, is whether you have seen
6 Exhibit-13 before.

7 A. I do recall seeing this,
8 yes.

9 Q. And can you tell us what
10 Exhibit-13 is?

11 A. It's a letter from Carl
12 Pernicone to me dated February 24th,
13 2006, and he is writing on behalf of
14 Royal, advising Grace that BNSF Railway
15 is seeking coverage from Royal under the
16 Zonolite policies for the Libby claims.

17 Q. Okay. And did you receive a
18 copy of Exhibit-13 on or about February
19 24, 2006?

20 A. I believe so.

21 Q. And --

22 A. Although it looks like the
23 stamp is March, but...

24 Q. You may have received it as

1 A. Yes.

2 Q. Am I also correct that in
3 February of 2006, Royal advised Grace
4 that it was referring to Grace the BNSF
5 claims that were being made under the
6 Grace Zonolite policies?

7 A. Repeat that question.

8 MS. HARDING: Object to
9 form.

10 MR. SCHIAVONI: Why don't is
11 we have it read again.

12 (The reporter read from the
13 record as requested.)

14 THE WITNESS: Yes.

15 BY MR. SCHIAVONI:

16 Q. Is one of the things that
17 Royal did in February of 2006 was invoke
18 the indemnity of the 1995 settlement
19 agreement that it had with Grace?

20 A. Yes, it did.

21 Q. Am I correct in May of 2006,
22 Grace joined Royal in jointly responding
23 to BNSF's request for coverage under the
24 Grace's Zonolite policies?

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1 A. Yes.
 2 Q. And am I correct,
 3 Mr. Hughes, that Grace advised BNSF in
 4 May of 2006 that Royal had fully
 5 discharged and satisfied any obligation
 6 it may have owed to Grace for
 7 asbestos-related claims under the
 8 Zonolite policies?
 9 MS. HARDING: Object to
 10 form.
 11 But go ahead.
 12 THE WITNESS: Yeah, my
 13 recollection was that that was the
 14 general message in the letter.
 15 BY MR. SCHIAVONI:
 16 Q. Is it also true, Mr. Hughes,
 17 that Grace told Royal -- and this is in
 18 May of 2006 -- that Royal had fully
 19 discharged and satisfied any obligations
 20 it may have owed to Grace for
 21 asbestos-related claims under the
 22 Zonolite policies?
 23 A. We may have told them that,
 24 but the agreement itself had -- I think

1 appear on the bottom?
 2 A. Somebody signed it on my
 3 behalf. Anybody who knows my writing
 4 knows that's definitely not my writing.
 5 Q. Did you authorize had person
 6 to sign on your behalf?
 7 A. Yes.
 8 Q. And were you authorized to
 9 enter into this letter on behalf of
 10 Grace?
 11 A. Yes, I was.
 12 Q. And your entry into this
 13 letter or author -- was your
 14 authorization of this letter part of the
 15 ordinary course of your duties at Grace?
 16 A. Yes.
 17 Q. Were the statements that are
 18 made in Exhibit-14 true and correct when
 19 they were made?
 20 A. I believe so, yes.
 21 Q. Prior to issuing the May 5th
 22 letter that's marked as Exhibit-14, did
 23 you review the 1995 Grace/Royal
 24 settlement?

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1 the answer to your question is yes.
 2 MR. SCHIAVONI: Okay. I am
 3 going to hand you a copy, and we
 4 will mark this as Exhibit-14.
 5 (Hughes-14 marked for
 6 identification at this time.)
 7 BY MR. SCHIAVONI:
 8 Q. Have you seen a copy of
 9 Exhibit-14 before, Mr. Hughes?
 10 A. Yes, I have.
 11 Q. And can you tell us what it
 12 is generally?
 13 A. It's a letter on Wilson
 14 Elser letterhead that was sent by Royal
 15 and Grace to attorneys for BNSF Railway
 16 in Montana indicating that we had -- that
 17 Royal had discharged its obligations
 18 under the policies and that if they
 19 intended to proceed against Grace, that
 20 we would have to take action in the
 21 bankruptcy court.
 22 Q. Mr. Hughes, on the second
 23 page of this letter, the page that's
 24 marked GCO 000200, does your signature

1 A. Yes, I did.
 2 Q. And prior to issuing the May
 3 5, 2006 letter that's marked as
 4 Exhibit-14, did you have occasion to
 5 speak to anybody at Grace who was
 6 involved in the 1995 Grace/Royal
 7 settlement?
 8 A. Yes.
 9 Q. And did you speak to
 10 Mr. Posner?
 11 A. Yes, I did.
 12 Q. Did you speak to anyone
 13 else?
 14 A. I think that Mr. Finke and
 15 Grace counsel were also involved in this
 16 letter.
 17 Q. And am I correct that in May
 18 of 2006, one of the other things you did
 19 was that you advised BNSF that Grace had
 20 fully and finally released Royal from any
 21 further liability for asbestos-related
 22 claims under the Grace/Zonolite policies?
 23 MR. LEWIS: Objection,
 24 leading.

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1 MR. SCHIAVONI: All right.
 2 I will rephrase the question.
 3 BY MR. SCHIAVONI:
 4 Q. Did you --
 5 MR. JACOB COHN: This is
 6 cross.
 7 MR. LEWIS: It's not cross.
 8 These guys are in perfect symphony
 9 here.
 10 BY MR. SCHIAVONI:
 11 Q. In May of 2006, Mr. Hughes,
 12 did you advise BNSF on behalf of Grace
 13 that Grace had fully and finally released
 14 Royal from any further liability for
 15 asbestos-related claims under the
 16 Grace/Zonolite policies?
 17 MR. LEWIS: Same objection,
 18 leading.
 19 THE WITNESS: This letter
 20 says that.
 21 BY MR. SCHIAVONI:
 22 Q. And that's a statement you
 23 authorized to be made to BNSF, right?
 24 MR. LEWIS: Same objection,

1 Q. Let's look together.
 2 A. "There is no basis for BNSF
 3 to pursue coverage from Royal for
 4 asbestos related claims under the
 5 Zonolite policies," is the final sentence
 6 of the first paragraph on page 2. But
 7 that's not how I understood your
 8 question.
 9 Q. Let me see if I can ask it
 10 again. Okay.
 11 In May of 2006, did you
 12 advise BNSF that there was no basis for
 13 BNSF to pursue coverage from Royal for
 14 asbestos-related claims under the
 15 Zonolite policies?
 16 A. Yes.
 17 MR. LEWIS: Objection,
 18 leading. Let the record reflect
 19 that the witness answered before I
 20 had an opportunity to state my
 21 objection.
 22 BY MR. SCHIAVONI:
 23 Q. And was that a true and
 24 correct statement when it was made?

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1 leading.
 2 THE WITNESS: Yes. Grace
 3 authorized, yes.
 4 BY MR. SCHIAVONI:
 5 Q. And, Mr. Hughes, did you
 6 believe that statement to be a true and
 7 correct statement at the time it was
 8 made?
 9 MR. LEWIS: Objection, asked
 10 and answered.
 11 THE WITNESS: Yes.
 12 BY MR. SCHIAVONI:
 13 Q. And is one of the other --
 14 strike that.
 15 Mr. Hughes, did you also
 16 advise BNSF in May of 2006 that there was
 17 no basis for BNSF to pursue coverage from
 18 Royal for asbestos-related claims under
 19 the Grace/Zonolite policies?
 20 MR. LEWIS: Objection,
 21 leading.
 22 THE WITNESS: Where does it
 23 say that in this letter?
 24 BY MR. SCHIAVONI:

1 MR. LEWIS: Objection, asked
 2 and answered.
 3 THE WITNESS: Yes.
 4 BY MR. SCHIAVONI:
 5 Q. You were asked some
 6 questions by Libby's counsel about your
 7 knowledge of the exposure that the manner
 8 in which folks were exposed in Libby.
 9 Do you recall generally
 10 those questions?
 11 A. Yes.
 12 Q. Do you have any personal
 13 knowledge based on your own observations
 14 of how anybody in Libby was, in fact,
 15 exposed to asbestos?
 16 MR. LEWIS: Objection. That
 17 question is loaded up and leading.
 18 MS. HARDING: I will object
 19 to form as well.
 20 Go ahead.
 21 THE WITNESS: I never was
 22 personally present at the Libby
 23 mine and mill and the Libby
 24 operation, but there is a

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1 substantial amount of documentary
 2 evidence and scientific evidence,
 3 industrial hygiene records and so
 4 on concerning the exposure levels
 5 of employees at the mine and mill.
 6 And my earlier testimony was based
 7 on my familiarity generally with
 8 that information.
 9 BY MR. SCHIAVONI:
 10 Q. Okay. So you were relying
 11 on general documentation about things
 12 that occurred in Libby; is that right?
 13 MS. HARDING: Object to form
 14 as to things that occurred in
 15 Libby.
 16 But go ahead.
 17 THE WITNESS: I was relying
 18 on air sampling data that had been
 19 collected by the company, by the
 20 State of Montana, by the United
 21 States Federal Government, by
 22 insurance carriers providing
 23 coverage to Grace, I believe as
 24 well on air sampling and personal

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1 air sampling that was for
 2 employees involved in the mine and
 3 milling of vermiculite. So I
 4 think that's a significant body of
 5 data out there, and that's what I
 6 was relying on.
 7 BY MR. SCHIAVONI:
 8 Q. Would it be fair to say that
 9 you can't offer any testimony about how
 10 any individual Libby claimant was, in
 11 fact, exposed to asbestos based on any
 12 personal knowledge that you might have
 13 with regard to that Libby claimant?
 14 MS. HARDING: Objection.
 15 MR. LEWIS: Objection,
 16 leading.
 17 MS. HARDING: Objection to
 18 form and to the broad
 19 characterization of Libby
 20 claimant.
 21 THE WITNESS: Again, I was
 22 never present in Libby during the
 23 manufacture and mining and milling
 24 of vermiculite and vermiculite

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1 concentrate. So to that extent,
 2 no.
 3 But, again, there is a body
 4 of data out there that I am very
 5 familiar with that was created by
 6 various individuals, trained
 7 industrial hygienists, measuring
 8 the exposures associated with the
 9 Libby work, and that's what was
 10 the basis for what my earlier
 11 testimony.
 12 BY MR. SCHIAVONI:
 13 Q. Is it true that some of the
 14 people in Libby that have brought claims
 15 against Grace also asserted that they
 16 were exposed to asbestos from non-Grace
 17 sources?
 18 A. Yes.
 19 Q. Okay. And the lumber yard
 20 out there is one such source, right?
 21 A. Yes.
 22 Q. And is it also true that
 23 some of the people in Libby have
 24 identified other sources of asbestos that

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1 are unrelated to Grace besides the lumber
 2 yard?
 3 A. Yes.
 4 Q. You were shown a copy of
 5 Exhibit Hughes-1. Let me hand you what
 6 was previously marked as Exhibit-1.
 7 Did you prepare Exhibit-1?
 8 A. No.
 9 Q. Was Exhibit-1 prepared under
 10 your supervision?
 11 A. No. I think I testified to
 12 this earlier that I was involved in the
 13 collection of the data a lot of which is
 14 reported in the report. But Mr. Port
 15 didn't directly report to me, and I
 16 didn't draft the report itself or the
 17 attached tables.
 18 Q. So some of the data in
 19 Exhibit-1 may have been collected by you,
 20 but you didn't prepare the exhibit and
 21 you didn't supervise its preparation; is
 22 that right?
 23 A. No.
 24 MS. HARDING: His question

Arrowwood

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1 was correct, that you didn't -- it
2 was one of those backwards things.

3 THE WITNESS: Sorry.

4 BY MR. SCHIAVONI:

5 Q. Some of your data may be in
6 Exhibit-1, but you didn't prepare
7 Exhibit-1 and you didn't supervise the
8 preparation of Exhibit-1; is that right?

9 A. I did not prepare Exhibit-1,
10 nor did I supervise the preparation of
11 Exhibit-1.

12 Q. The 1995 Grace/Royal
13 settlement covered policies issued to the
14 Zonolite Company; is that generally
15 right?

16 A. Yes.

17 Q. Okay. Are you aware whether
18 Royal's also alleged to have issued,
19 entirely separate from that, a high level
20 excess policy in the 1980s to Grace?

21 A. I learned that in connection
22 with the bankruptcy. I am not sure I
23 knew that beforehand.

24 Q. Okay. But sitting here

CPO

Arrowwood

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1 today, you are familiar with the fact
2 that there is a separate high level
3 excess policy that Royal has issued in
4 '80s to Grace; is that right?

5 A. I believe so, yes.

6 Q. And Mr. Brown asked you some
7 questions about whether or not rights to
8 associate in the defense and to
9 cooperated had been ceded by his clients
10 to Grace.

11 Do you remember those
12 questions generally?

13 MS. HARDING: Object to
14 form.

15 But go ahead.

16 MR. SCHIAVONI: All right.

17 THE WITNESS: There are
18 questions about it. I think the
19 question was whether we had waived
20 or all agreed, and the answer was
21 no, I wasn't aware of any such
22 agreement.

23 BY MR. SCHIAVONI:

24 Q. Has either Royal or

PP
Obj:
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1 Arrowwood ceded or in any way waived or
2 given up any of its rights to associate
3 in the defense or cooperate or any other
4 rights under its high level excess
5 policy?

6 A. Not that I am aware of.

7 MS. HARDING: Object the
8 form with respect to rights.

9 BY MR. SCHIAVONI:

10 Q. And am I correct that prior
11 to the bankruptcy filing, Grace hadn't
12 tendered any claims to Royal under that
13 high level excess policy?

14 A. I don't know the extent to
15 which we were tendered claims
16 pre-petition to high level excess
17 policies. Generally, the notice of the
18 claims was done by our insurance broker.

19 Q. Okay. So you don't know one
20 way or the other?

21 A. I don't.

22 MR. SCHIAVONI: That's all I
23 have. Thank you, Mr. Hughes.

24 - - -

PP
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EXAMINATION

- - -

3 BY MR. IFFT:

4 Q. Good afternoon, Mr. Hughes.

5 A. Good afternoon.

6 Q. My name is Richard Ifft. I
7 represent Maryland Casualty Company and
8 two Zurich entities, Zurich Insurance
9 Company and Zurich Insurance Bermuda
10 Company.

11 A. Okay.

12 Q. I am not, I think, going to
13 ask many questions about Maryland
14 Casualty today.

15 With respect to Zurich, I
16 will represent to you that the two Zurich
17 entities issued a number of high level
18 excess policies, and I will direct your
19 attention to what we have marked as
20 Exhibit-12, the Exhibit 6 to the Exhibit
21 Book for the Plan.

22 Directing your attention to
23 Schedule 1, page 20, you will see there
24 is about 11 or so participations on that

PP
Obj:
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1 last page.
 2 A. Yes.
 3 Q. If I were to ask you the
 4 same questions that other carriers have
 5 asked you, if you are aware of any
 6 waivers by any of the Zurich entities of
 7 their rights under the policy, are you
 8 aware of that with respect to those
 9 policies?

10 A. No, I am not.
 11 MS. HARDING: Object to
 12 form --
 13 MR. LIESEMER: Object to
 14 form.
 15 MS. HARDING: -- as to
 16 rights.

17 BY MR. IFFT:
 18 Q. You are aware, Mr. Hughes,
 19 that the excess insurers under their
 20 policies typically have certain rights
 21 with respect to their ability to be
 22 involved with respect to the handling of
 23 the claims against Grace?
 24 A. Yes.

PP
Obj:
R; F;
LO;
S

PP
Chr

PP
Obj:
BE;
R

1 A. No, I am not.
 2 Q. I think you testified that
 3 you had some familiarity with Asbestos
 4 Insurance Reimbursement Agreements
 5 generally, correct?

6 A. Yes.
 7 Q. And what's your
 8 understanding as to how those typically
 9 work?

10 A. They typically would work
 11 that as the costs were incurred under --
 12 we would agree in terms of how it was
 13 allocated, but Grace had a model in terms
 14 of how the terms were allocated on
 15 different policies. And to the extent
 16 the policy was triggered that the party,
 17 in this case Zurich International, would
 18 pay Grace or reimburse Grace for some
 19 portion of the costs that were incurred
 20 for those claims.

21 Q. Pursuant to a defined
 22 percentage in the agreement?

23 A. Defined percentage,
 24 generally, yes.

PP
Obj:
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LO

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1 MR. LIESEMER: Object to the
 2 form.

3 BY MR. IFFT:

4 Q. And is it your testimony
 5 that you are not aware of any waiver of
 6 any such rights by the Zurich companies
 7 with respect to their policies?

8 MS. HARDING: Object to form
 9 again.

10 But go ahead.

11 MR. IFFT: You can answer.

12 THE WITNESS: I am not aware
 13 of any.

14 BY MR. IFFT:

15 Q. Let me direct your attention
 16 to Schedule 3. I will represent to
 17 you that this is the Schedule of Asbestos
 18 Insurance Reimbursement Agreements, and
 19 you will see at the bottom there is one
 20 agreement with Zurich International with
 21 respect to, I will represent to you, one
 22 of those 11 policies.

23 Do you happen to be familiar
 24 with that agreement, sitting here today?

PP
Chr

PP
Obj:
R; LO;
S

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Chr

PP
Obj:
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1 Q. Do those agreements also
 2 typically have any provisions that on
 3 their face alter the rights that
 4 otherwise might exist under the policy
 5 with respect to the insurer's involvement
 6 in the claims?

7 MS. HARDING: Object to
 8 form.

9 MR. LIESEMER: Join.

10 THE WITNESS: I think that
 11 would vary. My understanding
 12 would be generally no, but I think
 13 that it certainly -- I would have
 14 to look at the individual
 15 agreement to comfortably say that.

16 BY MR. IFFT:

17 Q. Okay. You are not sure,
 18 sitting here today?

19 A. I am not sure, but you are
 20 also asking me specifically about
 21 agreements. And your other questions
 22 were generally in the absence, but here
 23 there were agreements. And I have to
 24 look at the individual agreements before

PP
Obj:
R; BE;
LO; F

PP
Obj:
R; S;
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